

"purpose" of facilities-based discrimination and exclusivity is to thwart competition.

**D.    Enforcement Procedures Should  
Be Quick and Simple**

**1.    In General**

38. The method of adjudicating programming disputes suggested in NPRM at ¶ 16 will, in Liberty's experience, exacerbate, not resolve, anti-competitive programming practices. Non-cable MVPDs simply do not have the time or resources to engage in protracted litigation before the Commission during which they have to present detailed evidence on specific competitive injury and other issues with large communications conglomerates as adversaries. Indeed, the adjudicatory enforcement procedure apparently contemplated by the Commission imposes all the burdens and expenses of a full blown antitrust lawsuit on the aggrieved MVPD without any of the potential rewards of treble damages and attorney's fees. See NPRM at ¶¶ 38-49. If the remedial procedures under the antitrust laws could have prevented anti-competitive programming practices, there would have been no need for Sections 12 and 19 in the first place. Congress enacted those sections because the antitrust laws have not provided an effective remedy.

**2.    Liberty's Experience With Enforcement  
Procedures**

39. Before the Commission adopts a litigation-oriented approach to enforcing Sections 12 and 19, it should consider the

regulatory morass Liberty has trudged through in New York—thus far without success—to get Court TV. This experience might encourage the Commission to adopt clear "bright line" standards that promote the availability of programming to all MVPDs and eschew burdensome, litigation as an enforcement tool.

40. The New York City cable television franchise has a provision analogous to Section 628(b) that precludes Time Warner from exercising its control over Court TV to prevent the sale of Court TV to competitors such as Liberty. The pertinent section of the Manhattan franchise agreement is annexed as Exhibit C.

41. In 1989, Liberty's owners asked the New York State Commission on Cable Television ("NYSCC") to conduct a hearing and adopt regulations that would prohibit refusals to deal with SMATV companies by vertically integrated cable operators/programmers. NYSCC declined to even conduct a hearing saying "we do not find the existence of a factual dispute which warrants a hearing." In Re: Petition of Manhattan Cable for Access to 155 East 31st Street, NYSCC Docket No. 80204, Order released September 29, 1989.

42. In June, 1992, Liberty filed a complaint with the New York City Department of Telecommunications and Energy ("DTE"), the city agency that oversees franchise compliance by Time Warner. Liberty complained that Time Warner was preventing Liberty from obtaining Court TV in violation of Time Warner's franchise. Seven (7) months later and without conducting a hearing, the DTE declined to address Liberty's complaint saying that there had been no violation of the antitrust laws. See annexed Exhibit D. Liberty

has had to take legal action in the New York State courts to force DTE to fulfill its oversight responsibilities.

43. After two and a half (2½) years of petitioning state and local regulators and the court for relief from Time Warner's refusals to sell programming, Liberty has received only delays and legal bills—but not Court TV. And Time Warner has vigorously opposed Liberty every step of the way.

44. The right of access to programming is meaningless if the cost and delay of enforcement are excessive.<sup>18</sup> Accordingly, the Commission should learn from Liberty's experience and adopt rules that make its positions clear and discourage litigation before the Commission over "public interest" determinations, subjective intent based tests, actual specific injury and other "exceptions" to the clear Congressional policy of open access by all MVPDs to programming.

### 3. Proposed Rule

45. The Commission should limit its adjudicatory role in enforcing Sections 12 and 19 to determining whether there has been compliance with the statute and regulations. Relief should simply be declaratory rulings that particular conduct does or does not comply with the law and, if it does not, directing the offending

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<sup>18</sup> Time Warner is constantly challenging Liberty to seek redress of its grievances through the local courts or regulators. As a small competitor, Liberty can ill-afford the cost or time to battle Time Warner's big law firms or wind through lengthy appeals. Knowing this, Time Warner constantly threatens legal action against Liberty and its customers to discourage competition.

party to comply. Declaratory rulings and compliance orders will focus the Commission's limited resources on addressing the dispositive policy issues and not the particular commercial costs and damages caused by illegal programming practices.

46. By the same token, there should be real penalties and other financial disincentives to discourage violations of the law. The Commission should therefore provide that illegal programming practices will result in a monetary penalty to be paid to the U.S. Treasury. The amounts should be set with consideration of penalties as a deterrent and as a source of revenue to help defray the administrative cost of enforcement.

47. The Commission should also rule that an aggrieved MVPD or programmer has a federal private cause of action in court to pursue a claim for damages for the violation of the law. A private cause of action can be readily found in Sections 12 and 19. See Centel Cable Television Co. of Florida v. Admirals Cove Associates, 835 F.2d 1359 (11th Cir. 1988) (recognizing a private cause of action to enforce Section 621). A federal administrative agency can, in its regulations, implement and further define a federal private cause of action. Long v. Trans World Airlines, 913 F.2d 1262, 1266-67 (7th Cir. 1990); Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 947-48 (3rd Cir.), cert. denied, 474 U.S. 935 (1985); Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 536 (9th Cir. 1984). Congress did not intend the administrative remedies for illegal programming practices to be the only remedies. See Section 628(e)(2). This procedure will let the Commission do what it does best—set national telecommunications

policy—and let the courts address the damages caused by illegal conduct on a case by case basis.

48. The Commission should rule that petitions for declaration of the legality of a presumptively illegal programming practice must be filed within sixty (60) days of the adoption of the rules or commencement of the practice if it post-dates the rules.<sup>19</sup> Failure to timely file a such a petition means that the presumption of illegality becomes conclusive in all other administrative or court proceedings.

49. An aggrieved MVPD should, at any time, be able to petition the Commission for a declaration that a particular programming practice is illegal. The petitioner should plead, on good faith belief, sufficient facts to show that the programming practice is presumptively illegal, i.e. facilities-based discrimination or an exclusive arrangement.<sup>20</sup> The programmer then has to answer the allegations and show, by clear and convincing evidence, that the programming practice promotes "effective competition."

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<sup>19</sup> It has been Liberty's experience that most programming contracts give a programmer great flexibility to change rates and other material terms and conditions on thirty to sixty day's notice with a right of cancellation by the operator if it does not agree with the changes.

<sup>20</sup> Standards for frivolous actions can be readily adopted from case law interpreting F.R.C.P. 11.

4. An Example of How The Rule Will Operate

50. In the case of Liberty and Court TV, the exclusive Time Warner/Court TV contract will be presumed illegal as a violation of Sections 616(a)(3) and 628(b). The proponents of the exclusive agreement can, if they wish, petition the Commission within sixty (60) days of adoption of the rules for a declaration that the exclusive agreement is valid because it serves the public interest as defined in Section 628(c)(4). Failure to do so will mean the presumption is conclusive in all subsequent administrative and court proceedings. The burden will be on the proponents to show by clear and convincing evidence that the exclusive agreement promotes the advent of "effective competition" in New York City within the duration of the agreement. The proponents will have to show that effective competition will be achieved by operation of each of the five factors set forth in Section 628(c)(4).

51. Liberty and all other affected MVPDs<sup>21</sup> will have to be served with the petition and given the opportunity to participate as a party in the proceeding, including the right to appeal. If the Commission finds that the proponents have not met their burden of proof, then the exclusive contract is conclusively illegal. The Commission may, in its discretion, levy a penalty on Time Warner and Court TV. Liberty, and any other affected MVPDs, will have a private federal cause of action for damages against

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<sup>21</sup> An "affected MVPD" is any MVPD that has been unable to obtain Court TV due to the Time Warner exclusivity.

Time Warner and Court TV arising out of the illegal programming practice which they may pursue in federal court.

52. Needless to say, between the presumptions, penalties, and damage suits, the only companies who should petition the Commission for a declaration of legality will be those who are absolutely certain they will be able to prove that their discrimination or exclusivity actually do promote "effective competition." And "effective competition" among all MVPDs is precisely what Congress wants to achieve in the 1992 Cable Act.

**E.    The Broadcast Rules Should Be  
Applied in Determining Vertical  
Integration of Cable Operators  
and Programmers**

53. The Commission should adopt the broadcast standards in determining whether a cable operator has an "attributable interest" in a programmer under Section 628. This is a clear "bright line" standard that is already well established, subject to established interpretation and readily understood. The use of such a "bright line" standard will allow the Commission to avoid a detailed and subjective analysis of the extent to which a cable operator actually controls or influences a programmer. Such control and influence are presumed to exist once the five percent (5%) threshold is crossed. This standard has worked well in the broadcast and telephone industries and there is no reason why it will not also work in cable television regulation.

### **III. Conclusion**

54. Congress intended to give all non-cable MVPDs access to programming without interference by the entrenched cable monopolies. The Commission has the opportunity to make that goal a reality. The Commission should presume that facilities-based discrimination and exclusive arrangements are illegal and put the burden on programmers and cable operators to show that such practices actually achieve the Congressional goal of "effective competition." Enforcement should be simple and efficient and thus meaningful.

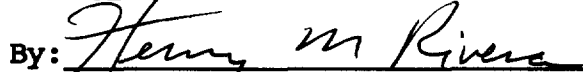
Respectfully submitted,

**LIBERTY CABLE COMPANY, INC.**

BY: **W. JAMES MacNAUGHTON**

  
\_\_\_\_\_  
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Woodbridge, New Jersey 07095  
(908) 634-3700

**GINSBURG, FELDMAN AND BRESS  
CHARTERED**

By:   
\_\_\_\_\_  
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Washington, D. C. 20036  
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**ATTORNEYS FOR LIBERTY CABLE  
COMPANY, INC.**

Dated: January 25, 1993





UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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TURNER BROADCASTING SYSTEM, INC., : Civil Action Nos. 92-2247  
Plaintiff, : 92-2292  
- against - : 92-2494  
: 92-2495  
: 92-2558

FEDERAL COMMUNICATIONS COMMISSION, :  
et al., :  
Defendants. :

- - - - -X

AND CONSOLIDATED CASES :

- - - - -X

AFFIDAVIT OF PETER O. PRICE  
ON BEHALF OF AMICUS CURIAE  
LIBERTY CABLE COMPANY, INC.

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

PETER O. PRICE, being duly sworn, deposes and says:

1. I am the President of Liberty Cable Company, Inc. ("Liberty"). I make this affidavit (a) in support of the motion by Liberty for leave to appear as an amicus curiae in these consolidated cases and (b) in opposition to the motions of Plaintiff Time Warner Entertainment Company, L.P. ("Time Warner") and other plaintiffs in these consolidated actions, to the extent they seek a preliminary injunction against Section 19 ("Section 19") of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").

EX.A

2. Liberty seeks to appear as amicus curiae in these actions because Time Warner and others are seeking to enjoin Section 19 of the 1992 Cable Act. This section, including the regulations and procedures to be established under the section, was designed to foster competition in the cable industry -- and more specifically to provide recourse to businesses, such as Liberty, against anti-competitive barriers mounted by vertically integrated cable operators and programmers, such as Time Warner. As detailed below, Section 19 is not only constitutional, it is a desperately needed legislative response to the serious anti-competitive and unfair practices existing in the cable industry.

A. Liberty's Perspective On Section 19

3. Liberty is a satellite master antenna television ("SMATV") operator in the City of New York, where it currently services approximately 7,000 subscribers at dozens of sites in the metropolitan area. Liberty's franchised competitor in New York is Time Warner, which dominates the cable market in Manhattan through Manhattan Cable Television and Paragon Cable Manhattan and in the outer boroughs through B-Q Cable, QUICS and Staten Island Cable. New York City is the largest municipal franchisor of cable operators in the nation, and Time Warner serves more than 90% of the subscribers in New York City as well as customers outside the New York metropolitan area.

4. On a national level, Liberty is a leading implementer of technological alternatives to cable. To the best

of Liberty's knowledge, it is the only SMATV company in the country successfully overbuilding and competing head to head with a local franchised cable company. Liberty has built the largest 18 ghz microwave network in the United States and delivers its signal to many buildings via terrestrial microwave. Liberty will also be among the first video programmers in the United States to test "video dialtone" service and technology beginning in 1993. These emerging technologies have been heralded widely in the press. One of Section 19's primary and express aims is to ensure that businesses pursuing such new technologies will be able to compete fairly with entrenched cable operators, through reduction of the barriers imposed by vertical integration of cable operators and programmers.

B. The Injury That A Preliminary Injunction  
Against Section 19 Will Precipitate

5. If Section 19 is enjoined during these proceedings, it will prevent the FCC from considering public comment and from fashioning regulations that respond to the substantial economic goals that underlie the implementing legislation within the 180 day period mandated by statute. Liberty intends to participate with many other interested parties in that regulatory rule-making process, and expects Time Warner and the other plaintiffs to do the same. The Court should not allow Time Warner and the others seeking to enjoin Section 19 to delay this rule-making process.

6. Liberty is suffering injury on a daily basis. If Time Warner and others succeed in persuading this Court to grant a preliminary injunction, Liberty and others will continue to suffer real injury. This injury is not hypothetical. For example, cable companies owned or controlled by Time Warner now force Liberty to pay more than others for the same programming services. There is no apparent reason for this price discrimination other than the fact that Liberty is an SMATV company and a Time Warner competitor. This higher pricing has made it more difficult for Liberty to compete effectively with Time Warner. Liberty expects that Time Warner's anti-competitive conduct will be corrected by Section 19 and regulations promulgated thereunder and, on the other hand, will continue if Section 19 is enjoined.

7. In addition, Time Warner allows programming such as Court TV, which is produced by an affiliate of Time Warner, to be sold to all other cable and SMATV companies in the United States, but not Liberty. Indeed, Liberty's frustrated efforts to secure programming from Court TV are a prime example of the abuses of exclusive contracts that Section 19 would correct. In a discussion I had earlier this month with Steven Brill, the President of Court TV, Mr. Brill stated that Court TV's partner, Time Warner, wanted an exclusive in the New York market for its affiliates, Manhattan Cable and Paragon, and that Court TV "reluctantly" had agreed to Time Warner's request. Mr. Brill stated that he believed it was in Court TV's best interest to

sell to anyone who wanted the programming and to do so at the same price for all customers, but that Time Warner had imposed a contrary policy on Court TV. Thus, notwithstanding my discussions with Court TV over a long period of time, Liberty has been unable to obtain Court TV programming due to the pressures and exclusive arrangements brought to bear by Time Warner upon Court TV.

8. Liberty has been singled out for discriminatory treatment in the sale of Court TV solely because it competes directly, head to head, with Time Warner at its largest cable operation in New York City. Once again, Liberty expects this anti-competitive practice will be corrected through Section 19 regulations, and, on the other hand, will continue for so long as Section 19 is enjoined.

9. The existing antitrust laws do not provide an effective or meaningful remedy for a small company like Liberty due to the time and cost of pursuing an antitrust claim against a corporate giant like Time Warner. Liberty expects that rules promulgated under Section 19 will specifically target pernicious behavior in the cable industry in a clear-cut way that will deter Time Warner's misconduct without protracted litigation, or at least provide an opportunity for improprieties to be remedied more cheaply and quickly through the expedited adjudicatory review required by Section 19.

C. Time Warner's Unclean Hands Counsel Against Preliminary Injunctive Relief

10. Before awarding any preliminary injunction against Section 19, the Court should also consider whether Time Warner is entitled to equitable relief from this Court in light of its history of inequitable behavior. In addition to discriminating in the sale of its programming, Time Warner has also engaged in an extensive harassment campaign directed against Liberty. This harassment is designed and intended to slow down the introduction of Liberty service in New York City, and ultimately to drive Liberty out of business in New York City.

11. Examples of Liberty's complaints and complaints of others who have been penalized for changing service from Time-Warner are annexed hereto as Exhibits A-F. These exhibits set forth specific facts about the Time Warner harassment campaign in New York, including (a) threats by Manhattan Cable to shred the cables of Liberty customers and defamatory letters sent by Manhattan Cable to Liberty customers (see my letter to William Squadron dated February 7, 1992 annexed as Exhibit A); (b) the harassment of Liberty's customers, employees and prospective employees by the Time Warner cable companies, and tampering with Liberty equipment (see my letters to William Squadron dated June 16, 1992, July 10, 1992 and July 17, 1992 annexed as Exhibits B, C and D); (c) harassment through abusive billing practices of former Manhattan Cable subscribers who switch to Liberty's service (see letter from Dina Fatigato to William Squadron dated July 17, 1992 annexed as Exhibit E, and W. James MacNaughton to


William Squadron dated October 1, 1992 annexed as Exhibit F); and (d) Time Warner's exclusionary arrangements precluding the sale of Court TV programming to Liberty (see Exhibit B).

12. Liberty has complained to the New York City Department of Telecommunications and Energy (the "Department"), the City agency which regulates Time Warner cable operations in New York City, regarding this harassment campaign. The Department has advised Liberty that it is conducting an investigation of this harassment campaign and will issue a written report. The Department has also advised Liberty that the report has been delayed due to the refusal of Time Warner to cooperate with the Department's investigation. In the proceeding before this Court, the City of New York has moved to appear as amicus curiae to support the 1992 Cable Act, and to oppose Time Warner on the motions for preliminary injunction.

13. A preliminary injunction against Section 19 will have the practical effect of slowing down the rule-making and adjudicatory process authorized by Section 19, and allowing Time Warner and others to continue reaping illicit profits and unfairly diverting business opportunities from competitors such as Liberty. Having lost their "political battle" in Congress, Time Warner and other vertically integrated cable operators should not be permitted to continue to pursue their anti-competitive economic agenda. Nor should these businesses be



permitted by the Court to advance their injurious economic agenda  
under the veil of the First Amendment.



PETER O. PRICE

Sworn to before me this  
17<sup>th</sup> day of December, 1992.

Deborah Bias  
Notary Public

DEBORAH BIAS  
Notary Public, State of New York  
No. 4992580  
Qualified in Suffolk County  
Commission Expires February 24, 1994

# LIBERTY CABLE & TELEPHONE

February 7, 1992

The Hon. William F. Squadron, Commissioner  
The City of New York  
Department of Telecommunications  
and Energy  
75 Park Place, 6th Floor  
New York, New York 10007

Re: Franchise Violation by Manhattan Cable Television

Dear Commissioner Squadron:

I represent Liberty Cable Company, Inc. ("Liberty"), a private cable company operating in the New York metropolitan area. As you know, Liberty distributes its signal throughout New York City using a sophisticated microwave system licensed by the Federal Communications Commission ("FCC"). Liberty operates without a cable TV franchise from New York City because Liberty does not install any cable in public streets. Liberty is a direct competitor of Manhattan Cable Television, Inc. ("MCTV")

I am writing to file a complaint against MCTV for violation of its franchise with New York City. In recent weeks, Liberty's customers and prospective customers, have been subjected to an illegal harassment campaign by MCTV. This campaign violates both the antitrust laws and MCTV's franchise obligations. Specifically, MCTV, through its representatives, has

- Threatened co-op Board members and managers on several occasions with the immediate cut off of MCTV service if the co-op signs a contract with Liberty.

- Threatened a co-op Board President with "shredding" the co-op's master antenna television system if the co-op signed a contract with Liberty.

- Confronted a Liberty construction crew in a threatening manner on a building rooftop while they were installing Liberty equipment.

- Conducted surreptitious surveillance of a Liberty demonstration site to determine who came to view Liberty's system.

EX. A

. MCTV falsely states that "Liberty's programming choices are not as comprehensive as ours." Attached please find Liberty's program offering which speaks for itself. This offering is vastly superior to the programming MCTV currently provides to virtually every building which has approached Liberty for a contract. Furthermore, Liberty has pledged to make any of the "public access and municipal access channels" controlled by MCTV available to Liberty subscribers if (and when) MCTV makes those channels available to Liberty.

. MCTV falsely states that "Liberty charges its customers for service calls." The truth is Liberty does not charge for service calls.

. MCTV falsely states that "Liberty's service, utilizing a non-union labor force, does not measure up." The truth is that virtually all of Liberty's satellite reception and microwave distribution system has been built by the same union labor employed by MCTV. Moreover, Liberty's microwave equipment is supplied by Hughes Communications, a well known manufacturer of cable electronics-including the satellites that deliver television programming.

. MCTV falsely states that "Liberty has no track record and could be gone tomorrow." The truth is that Liberty has been in continuous operation since 1987 serving some of the largest real estate developers in the New York metropolitan area-probably the most demanding customers in America. Furthermore, Liberty is backed by the Milstein family, prominent New York City real estate developers. The only way Liberty could be "gone tomorrow" would be if MCTV makes good on its threat to "shred" cables.

Any one of MCTV's activities directed against Liberty, taken in isolation, could be attributed to overzealousness by low level employees. But when considered as a whole, it is clear that MCTV has embarked on an orchestrated campaign of harassment, intimidation and disparagement directed against Liberty. These actions by MCTV-threats, lies and intimidation-coupled with MCTV's position as the monopoly cable system in Manhattan, constitute a violation of the antitrust laws and MCTV's franchise.

I draw your attention to s 3.8.01 of the MCTV franchise which provides that "in connection with the acquisition or distribution of any Cable Service for ultimate delivery to consumers in any part of the city [MCTV shall not] take any action nor engage in any practice pursuant to this Agreement which prohibits or inhibits in any way, in a manner which would be unlawful under the antitrust laws...any unaffiliated Cable Services provider or distributor...from distributing any Cable Service to any competing or potentially competing Cable Service distributor."

As you know, a Cable Service "distributor" includes both Liberty and the co-op buildings which make their MATV system available for distribution of Liberty's services. See s 3.8.07 of the MCTV franchise. MCTV's activities are interfering with Liberty's ability as a "distributor" to do business with another "distributor"-co-op boards.

MCTV has violated s 3.8.01 of the MCTV franchise and quite possibly other franchise terms as well, e.g. consumer protection laws. By this letter, Liberty respectfully requests the Department of Telecommunications and Energy to investigate MCTV's illegal conduct, hold hearings if necessary, and issue a cease and desist order to MCTV directing it to immediately stop its illegal harassment campaign against Liberty and to further stop making disparaging and untrue statements about Liberty. I would be glad to cooperate with your investigation in any way I can. I am prepared to testify under oath at a hearing to the truth of the allegations and statements made in this letter.

Sincerely,

LIBERTY CABLE COMPANY, INC.

By: 

Peter O. Price

On Behalf of Liberty Cable, Inc.

Enclosure

cc: The Hon. David Dinkins  
All members of the NYC Congressional  
Delegation  
The Hon. William Finneran - Chairman,  
New York State Commission on  
Cable Television  
The Hon. Al Sykes - Chairman,  
Federal Communications Commission  
R. Aurelio - President  
Time-Warner NYC Cable Group

# **LIBERTY CABLE PROGRAMMING**

## **Basic Service**

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Channel 2 (WCBS) - New York	Music Television (MTV)
Channel 4 (WNBC) - New York	Video Hits One (VH-1)
Channel 5 (WNYW) - New York	Nickelodeon
Channel 7 (WABC) - New York	Lifetime
Channel 9 (WWOR) - New York	WGN - Chicago
Channel 11 (WPIX) - New York	USA Network
Channel 13 (WNET) - New York	C-SPAN
Channel 20 (WTTX) - Connecticut	The Family Channel
Channel 25 (WNYE) - New York	Financial News Network / CNBC
Channel 21 (WLIW) - Long Island	The Discovery Channel
Channel 31 (WNYC) - New York	Home Shopping Network
Channel 47 (WNJU) - New Jersey	Turner Network Television (TNT)
Cable News Network (CNN)	The Weather Channel
CNN Headline	E! Entertainment Channel
ESPN	International Channel
Turner Broadcasting System (TBS)	American Movie Classics
Arts & Entertainment (A & E)	Building Bulletin Board*
Madison Square Garden (MSG)	The Preview Guide
Madison Square Garden II (MSG II)	Electronic Preview Guide
The Nashville Network (TNN)	Comedy Central
CUNY	Black Entertainment

## **Premium Channels**

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Home Box Office	Disney Channel
Cinemax	Sports Channel**
The Movie Channel	Sports Channel America**
Showtime	Pay-Per-View (Viewer's Choice One)
Bravo	Pay-Per-View (Viewer's Choice Two)
The Playboy Channel	Pay-Per-View

\* Additional terminals and cameras required to activate these channels.

\*\* Available on a bulk purchase basis only.

# MANHATTAN *Cable* TV

120 East 23rd Street  
New York, N.Y. 10010 4567

January 30, 1992

Dear Manhattan Cable TV Customer,

As you may know, Manhattan Cable Television, Inc. ("MCTV") is rebuilding its entire cable television system in Manhattan to provide its customers with the most advanced state-of-the-art cable service. We are required by our franchise agreement with the City of New York and by State law to rewire every building in our franchise area to meet City-mandated specifications designed to provide prompt and effective service, as well as expanded channel capacity.

We understand that Liberty Cable, an unfranchised company that has no obligation to meet City wiring standards or other regulatory requirements, has proposed to wire your building -- offering to serve every apartment on a bulk discount basis, under an exclusive, long-term agreement. We also understand that Liberty is representing itself as an "alternative" to the franchised cable operator, offering to conceal its wires behind walls or in common closets, while the City requires us to install all our facilities in public areas to ensure that repairs can be made whenever they are necessary. Liberty may be suggesting that if you accept its offer, you can avoid permitting MCTV to wire the building. That is not the case. Under State law, a franchised cable company like MCTV cannot be prevented from providing service to residents of multiple dwelling unit buildings. In fact, we are required by our franchise and by state law to serve all residents.

While Liberty cable wants to be the exclusive pay TV provider in your building, we are fully prepared to compete directly with them. We believe there are many reasons why, if we compete head to head, our superiority will be evident. Please consider the following:

- o Our technology is superior. Liberty is proposing to receive its off-air broadcast signals and satellite-transmitted signals at a few locations in the City and then to transmit that programming to various other buildings by microwave signals that travel through the air and require direct line of sight. MCTV carries its programming throughout the City on a closed system featuring coaxial and fiber optic cables placed in conduits below the streets. Our system is more reliable than microwave, which can be adversely affected by weather and atmospheric conditions, as well as obstructions to the line of sight. Further, the fiber

optic cables that we are using now and will be expanding in the future provides more channels -- initially at least 75, with the ability to be increased as the need arises. On the other hand, the channel capacity of the over-the-air microwave system proposed by Liberty is limited by the Federal Communications Commission's licensing procedures.

- o Liberty wires buildings in a manner that is contrary to the City's cable TV regulations and makes repairs and maintenance nearly impossible. Because the City has no jurisdiction over it, Liberty can place its wires behind walls or in common closets. Past experience has shown that this method inevitably leads to serious service problems. When a cable is faulty or is damaged -- which can occur inadvertently or intentionally -- the company must have universal access at all hours to ensure that repairs can be made. When the wiring is in private apartments, this universal access can never realistically be attained, hence essential repairs are prevented and service problems cannot be corrected. That is precisely why the City requires us to place our facilities in public areas.
- o Liberty forces 100% of the tenants to pay for cable service, whether they want it or not. The City takes the position that bulk arrangements force cable service upon tenants without free choice, create preferential classes, and can lead to landlord abuses. The City will not allow us to offer discounted rates or bulk deals. Liberty can offer these deals only because it is unregulated by the City. However, its bulk arrangements may lead to legal actions by tenants forced to pay for cable service they do not want.
- o Liberty requires long-term contracts (as well as 100% commitments). We make no such demands. With our service, each resident of the building makes his or her own decision whether to subscribe to our service and may cancel service at any time without penalty. Not only is this fairer to the residents, but it also prevents us from becoming complacent -- we must keep our customers satisfied or risk losing them at any time. Liberty, on the other hand, has been demanding a 10-year commitment in return for bulk discounts, and they can still raise prices during that period. Further, since Liberty's contract contains no restrictions against assignment, it can assign its obligations at will, so you cannot even be sure who might be providing the service in the future. We, on the other hand, cannot assign our obligations without the approval of both the City of New York and the State Cable Commission.
- o Liberty is not regulated by either the City or State of New York. We, on the other hand, operate under a franchise with the City and are governed by the regulations of the State Commission on Cable Television. We must meet stringent customer service standards and technical standards imposed by the City Department of Telecommunications and Energy and the State Cable Commission.

If something goes wrong with our service, our subscribers can complain to the City and State. However, if Liberty's subscribers are dissatisfied with their service, they have no government agency to complain to -- and with a long-term contract, they cannot even protest by cancelling service. They have no recourse but to continue to pay for unsatisfactory service.

- o Liberty's programming choices are not as comprehensive as ours. We carry the full spectrum of broadcast programming, sports, entertainment, educational, religious, ethnic and special interest programming designed to meet the widest variety of viewing tastes. We also offer, unlike Liberty, public access and municipal access channels. Further, the Time Warner New York City Cable Group, of which we are a part, is developing a 24-hour New York City news channel that will provide in-depth coverage of local news and community events. Liberty has no such service. We also have a more comprehensive pay-per-view operation, which will expand as our channel capacity expands.
- o Time Warner is the industry's technology leader, which ensures that our system will remain at the state of the art. In fact, our franchise with the City requires that we maintain our systems at the state of the art. As a fledgling company, Liberty simply does not have the resources to keep up with technological changes and programming developments, or to provide comparable quality of service.
- o Our service operation is far superior. We provide 24-hour service, using highly-trained customer service representatives and technicians backed by years of experience and affiliated with some of the City's most prominent unions. Liberty's service, utilizing a non-union labor force, does not measure up. Our service staff is far more experienced, stable and better trained to provide prompt and efficient service and maintenance. Additionally, we understand that Liberty charges its customers for service calls. We do not charge for service calls.
- o We are a well-established cable company with a long-term commitment to the City of New York and its residents. MCTV is part of the Time Warner New York City Cable Group, which includes cable systems in Manhattan, Queens and Brooklyn. Time Warner Inc. is a world-wide leader in entertainment and communications, and its cable operations are at the forefront of the cable industry in both technology and programming.

MCTV has been in operation for over 20 years and contributes to the City in many ways. For example, we pay a franchise fee to the City of 5% of our gross revenues. The Time Warner cable systems in Manhattan, Queens and Brooklyn paid the City a total of over \$17 million in 1991 alone. When the Manhattan Cable and Paragon Cable Manhattan franchises were renewed last year, the two Time Warner-affiliated systems committed to capital grants for public access, municipal access and City institutional networks totalling over \$16 million, with several million dollars





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June 16, 1992

The Hon. William F. Squadron  
Commissioner  
The City of New York  
Department of Telecommunications  
and Energy  
75 Park Place, 6th Floor  
New York, New York 10007

Re: Complaint by Liberty Cable Company, Inc.  
Against Manhattan Cable Television, Inc.,  
and Paragon Cable Manhattan

Dear Commissioner Squadron:

I represent Liberty Cable Company, Inc. ("Liberty"). I am writing to complain about the ongoing harassment campaign by Manhattan Cable Television, Inc. ("MCTV") and Paragon Cable Manhattan ("Paragon") against Liberty. In addition, I am also writing to bring to your attention further attempts by franchised cable companies in the City of New York to conspire with program suppliers and deny Liberty access to programming.

Harassment of Prospective Customers

As advised you in my letter of May 13, MCTV continues to harass prospective Liberty customers. Liberty has been negotiating a contract for some time with the Horizon Condominium at 415 East 37th Street. During the course of negotiations, MCTV filed an action in state court seeking to take the depositions of Liberty and the Horizon Board of Managers to discover the nature of Liberty's negotiations and installation. This application was made without any lawsuit being filed. Needless to say, the Horizon Board has been so intimidated by the threat of litigation, it has not yet entered into a contract with Liberty. Our discussions with

Ex.B